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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 FRANCISCO CEJA-LICEA,

12 Petitioner,

13 vs.

14 UNITED STATES OF AMERICA,

15 Respondent.

Case Nos. 11cv2973 BEN
11cr1961 BEN

**ORDER DENYING § 2255
MOTION**

16 **INTRODUCTION**

17 Petitioner Francisco Ceja-Licea moves pursuant to 28 U.S.C. § 2255 for a reduction in his
18 sentence based on his alien status and challenges to Bureau of Prisons (“BOP”) policies which
19 preclude him from participating in certain pre-release programs. (Dkt. No. 26.) Because, as discussed
20 below, he waived the right to challenge his sentence and his Equal Protection argument lacks merit,
21 the Court **DENIES** the motion.

22 **DISCUSSION**

23 **I. Waiver**

24 The Ninth Circuit recognizes strong public policy considerations justifying the enforcement
25 of a defendant’s waiver of his right to appeal or collaterally attack a judgment. *United States v.*
26 *Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990). Waivers play an important role in the plea
27 bargaining process and help ensure finality. *Id.* at 322. Generally, courts enforce a defendant’s waiver
28 of his right to appeal, as long as the waiver was “knowingly and voluntarily made” and “encompasses

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1 the defendant's right to appeal on the grounds claimed on appeal." *United States v. Nunez*, 223 F.3d
2 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266, 1270-71 (9th Cir. 1998)).

3 Petitioner waived his right to collaterally attack his sentence in his plea agreement.
4 (Petitioner's Plea Agreement § XI.) The plea agreement states that "[i]n exchange for the
5 Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any
6 right to appeal or to collaterally attack his sentence . . . unless the Court imposes a custodial sentence
7 above the high end of the guideline range recommended by the Government pursuant to this agreement
8 at the time of sentencing." (*Id.*) The Court did not impose a sentence above the high end of the
9 guideline range. Rather, the Court imposed the 46-month sentence recommended by both the
10 Government and Petitioner and the low end of the guideline range. (Dkt. Nos. 22-23.) Petitioner
11 received the benefit of his plea agreement and his knowing and voluntary waiver of his right to
12 collaterally attack his sentence requires denial of his § 2255 motion. *Navarro-Botello*, 912 F.2d at 322
13 (finding a defendant could not ignore his part of the bargain in a plea agreement after obtaining
14 concessions from the government).

15 **II. Equal Protection**

16 Petitioner filed the present motion under 28 U.S.C. § 2255, but his Equal Protection challenge
17 to the constitutionality of certain BOP policies is better construed as a challenge to the manner in
18 which his sentence is being executed under 28 U.S.C. § 2241. *See Hernandez v. Campbell*, 204 F.3d
19 861, 864 (9th Cir. 2000) (per curiam) (instructing that petitions challenging the "manner, location or
20 conditions of a sentence's execution must be brought pursuant to § 2241"); *see also Montano-Figuero*
21 *v. Crabtree*, 162 F.3d 548, 549 (9th Cir. 1998) (illustrating that challenges to BOP policies are
22 challenges to the execution of an inmate's sentence). Construing his motion liberally, the Court
23 considers Petitioner's Equal Protection claim under 28 U.S.C. § 2241. *See Zichko v. Idaho*, 247 F.3d
24 1015, 1020 (9th Cir. 2001) (noting a court's "duty to construe pro se pleadings liberally").

25 Petitioner claims that the BOP policy preventing him from participating in certain programs
26 or being housed in certain facilities due to his alien status violates his right to Equal Protection.
27 However, BOP policies preventing deportable aliens from participating in certain programs survive
28 constitutional challenge. *Cf. McLean v. Crabtree*, 173 F.3d 1176, 1186 (9th Cir. 1999) (finding BOP

1 exclusion of prisoners with detainers, including INS detainers, from community-based program based
2 on petitioners' alien status did not violate Equal Protection).

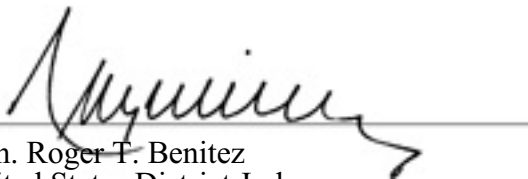
3 Additionally, a number of district courts have also found that policies preventing alien
4 prisoners from participating in certain pre-release programs are also justified because the purpose of
5 the program — helping prisoners reenter the community after serving their sentence — is not advanced
6 in the case of prisoners who will be deported upon release. *See Lizarraga-Lopez v. United States*, 89
7 F. Supp. 2d 1166, 1169-70 (S.D. Cal. 2000) (upholding deportable alien's ineligibility for community
8 confinement); *United States v. Rodas-Jacome*, No. 06cv1481, 2007 WL 1231630, at *4 (S.D. Cal. Apr.
9 24, 2007) (upholding restrictions for alien prisoners to obtain "good time" credits in rehabilitation
10 programs). Because deportable alien prisoners pose a greater flight risk and the public policy
11 justifications for pre-release programs are inapplicable, the challenged policies survive constitutional
12 scrutiny and Petitioner's Equal Protection claim fails. The Court also denies relief under § 2241.

13 CONCLUSION

14 Petitioner's motion is **DENIED**. The Clerk shall close case number 11cv2973.

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16 **IT IS SO ORDERED.**

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18 DATED: December 30, 2011

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21 Hon. Roger T. Benitez
22 United States District Judge
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